

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Wireless E911 Location Accuracy)	PS Docket 07-114
Requirements)	

**NON-NATIONWIDE CARRIER E911 LOCATION ACCURACY
INITIAL IMPLEMENTATION PLAN AND PROGRESS REPORT**

Farmers Mutual Cooperative Telephone Company (“Reporter”), a non-nationwide carrier, by its attorney, and pursuant to 47 C.F.R. § 20.18(i)(4)(i) and § 20.18(i)(4)(ii), hereby submits its initial E911 location accuracy implementation plan and its first report regarding progress toward implementation of the indoor location accuracy requirements specified at 47 C.F.R. § 20.18(i)(2).¹

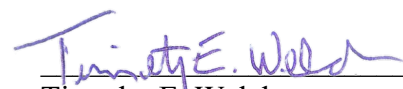
In support whereof, the following is respectfully submitted:

On June 2, 2017 Reporter filed a waiver request to be excused from the E911 implementation and reporting requirements because it has not received a PSAP request for the provision of E911 service (copy attached). Because Reporter has not received a PSAP request for E911 service, Reporter has no implementation plan or progress to report at this time.

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August 3, 2017

Respectfully submitted,
FARMERS MUTUAL COOPERATIVE
TELEPHONE COMPANY



Timothy E. Welch
Attorney for Reporter

¹ The second progress is due one year after submission of the instant report.

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1 **Filing** 2 **Review** 3 **Confirmation**

Proceeding:	07-114
Confirmation #:	201706022412530051
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Name(s) of Filer(s)	Farmers Mutual Cooperative Telephone Company
Law Firm(s)	Hill & Welch
Attorney/Author Name(s)	Timothy E. Welch
Primary Contact Email	welchlaw@earthlink.net
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Address of	Law Firm
Address	1025 Connecticut Ave., NW #1000 , Washington, DC, 20036
Email Confirmation	Yes

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Wireless E911 Location Accuracy Requirements)	PS Docket No. 07-114
)	
Request for Declaratory Ruling or Waiver)	

**PETITION FOR DECLARATORY RULING
OR ALTERNATIVELY
PETITION FOR TEMPORARY WAIVER**

Farmers Mutual Cooperative Telephone Company (FRN 0004776464) (“Petitioner”), by its attorney, and pursuant to 47 C.F.R. §§ 1.2, 1.3 and 1.925, hereby petitions for declaratory ruling or, alternatively, for waiver of various rules relating to E911 location accuracy requirements found at 47 C.F.R. § 20.18. In support whereof, the following is respectfully submitted:

Carrier Description

Petitioner is a non-nationwide, rural carrier serving rural areas in the State of Iowa. Petitioner has not received a request from any PSAP to provide E911 services generally or E911 location services specifically. Petitioner timely filed a Live 911 Call Report on February 2, 2017 and indicated that no location services were being provided.¹ The reason that Petitioner is not providing

¹ It was relatively easy for Petitioner to download the Commission’s report template and complete it to show that covered location services were not being provided; Petitioner considered that making the filing specified in the Commission’s January 18, 2017 *Public Notice* (DA 17-82) was not unduly burdensome. DA 17-82 does not suggest that a compliance waiver of the location rules was necessary. While Petitioner has not received a PSAP request to provide E911 services and is not obligated to provide E911 service or comply with the E911 location rules, it is noted that Petitioner has voluntarily deployed location technology and passes that location info to the PSAPs

compliant location services is that no PSAP has requested provision of E911 services. The situation where there is no PSAP request for E911 service is contemplated in § 20.18 and the rule exempts Petitioner from complying with the location provisions of § 20.18. However, the Commission's March 30, 2017 *Public Notice* (DA 17-306) at 4 informs that Petitioner is subject to the E911 location accuracy rules and associated reporting requirements and suggests that Petitioner should request a waiver of those rules by June 2, 2017 if compliance is not possible.² While § 20.18 expresses several times that carriers like Petitioner who have not received PSAP requests for E911 service are exempted from the requirement to install and maintain expensive E911 equipment and software, the March 30, 2017 *Public Notice* reads as if Petitioner is nevertheless required to install and operate an indoor E911 location finding system notwithstanding the fact that no PSAP has requested E911 service. With all due respect, the March 30, 2017 *Public Notice* does not consider Petitioner's particular situation and Petitioner seeks relief from the application of § 20.18.³

The Legal Framework of E911 Service Provision

The class of covered CMRS carriers who are exempted from the requirements of § 20.18 is defined at 47 C.F.R. § 20.18(d)(1) (2015) which provides that carriers are required to provide E911 Phase I enhanced services by the later of April 1, 1998 or within six months after receipt of a PSAP

as a public service. Because Petitioner has not received a formal request to provide E911 services, Petitioner has not assessed the compliance level of its location equipment/software/service. *Fourth Report and Order*, 30 FCC Rcd. 1259, 1262 (2015) (the new rules “do not change, or seek to change, the voluntary commitment that both nationwide and non-nationwide CMRS providers voluntarily have entered into and have already made progress towards.”).

² “Any CMRS provider that is unable to meet the two-year benchmark should request a waiver of the relevant rule on or before the June 2, 2017 [location accuracy] certification deadline.”

³ Other carriers have requested waivers of the E911 requirements because no PSAP is capable utilizing E911 data. *See e.g.*, PS Docket No. 07-114: Bristol Bay Cellular Partnership Petition for Temporary Waiver filed March 7, 2017 (“Bristol Bay Petition”); Docomo Pacific, Inc. Petition for Temporary waiver filed March 30, 2017 (“Docomo Petition”); AST Telecom, LLC d/b/a Bluesky Communications Petition for Temporary Waiver filed April 3, 2017 (“Bluesky Petition”).

request for E911 service. *See also* 47 C.F.R. § 20.18(f), (g)(2) (2015) (E911 Phase II location software and equipment must be installed and location service must be provided by the later of October 1, 2001 or within 6 months after PSAP service request); 47 C.F.R. § 20.18(m)(1) (2015) (generally exempting carriers from E911 service provisions until six months after receipt of a PSAP E911 service request including 47 C.F.R. § 20.18(j)'s x- and y-coordinate location confidence and uncertainty data). Because Petitioner has not received a PSAP request for E911 services, Petitioner is not required to provide location services under the express terms of Section 20.18. Accordingly, the Section 20.18 requirements do not apply to Petitioner and Petitioner seeks a declaratory ruling that it is not required to comply with any portion of Section 20.18, including any requirement to seek waiver of Section 20.18, until six months after the time that it receives, if ever, a valid PSAP request for E911 services.

Regarding the E911 indoor location accuracy requirement specifically, there are two classes of carriers who do not currently meet those accuracy requirements: 1) carriers like Petitioner who have not received a PSAP E911 service request and who are not required to provide E911 location services under the rules or otherwise comply with the requirements of Section 20.18; and 2) carriers who received a PSAP E911 service request more than six months ago but who cannot meet the location accuracy requirement because of some limitation of their deployed network technology or because the technology deployment has been delayed. While carriers who are subject to the Section 20.18 rule requirements, but who cannot meet those requirements for some reason, could reasonably be expected to request a rule waiver, there does not appear to be a rational reason to require a waiver filing from carriers who are exempted from the equipment and software installation requirements

of Section 20.18 by the rule's express terms.⁴ The March 30, 2017 *Public Notice* does not provide any reason why carriers such as Petitioner must file a rule waiver request for a rule which, on its face, does not apply to them and such a requirement seems irrational.⁵

47 C.F.R. §20.18(f) (1996), which initially implemented the E911 rules, exempted carriers from the E911 software, equipment, and service rules, absent a valid PSAP request, relating to the provision of basic 911 services such as the 911 calling number, the cell site being utilized, and the coordinates of the caller accurate to within 125 meters. After 20 years this basic 911 exemption still exists after a number of revisions and subsection numbering redesignations pertaining to Section 20.18. *See* § 20.18(m)(1) (2015) (explicitly exempting carriers from the requirements of 20.18(d)-(h)(2) absent a valid PSAP request). Specifically, carriers which have not received a valid PSAP request for E911 services are explicitly exempted by § 20.18(m)(1) from the following requirements:

- § 20.18(d)—Phase I Enhanced 911 Services (phone number of the 911 caller and the cell site location transmitting the call);
- § 20.18(e)—Phase II Enhanced 911 Services (call location by latitude and longitude in conformance with the Phase II with the accuracy requirements of 20.18(h));
- § 20.18(f)—location requirements utilizing network-based technology;
- § 20.18(g)(2)—location requirements utilizing handset-based technology;
- § 20.18(h)(1),(2)—network & handset-based Phase II accuracy requirements; and
- § 20.18(j)—indoor/outdoor confidence and uncertainty requirements.

With all due respect, it appears that the March 30, 2017 *Public Notice* applies a superficial reading of § 20.18(m)(1) to reach the conclusion that § 20.18(i) is applicable to Petitioner even though Petitioner has not received an E911 service request from a PSAP. Such superficial reading is made without regard to the history of Section 20.18 and without regard to the fact that it makes

⁴ Implicit in the *Public Notice* is that Petitioner was required to have installed E911 compliant indoor location equipment and software after August 3, 2015 without receiving a PSAP request.

⁵ “Expending scarce resources for delivery of accurate location data to a non-capable PSAP is irrational.” Bristol Bay Petition, at 4; Docomo Petition at 4; Bluesky Petition, at 3.

no sense to apply the § 20.18(i) testing, plan reporting, live call data reporting, and location accuracy certification/waiver requirements to carriers who are not required to have such capabilities installed in their networks.⁶

Sections 20.18(h) and 20.18(g)(2) explicitly provide that as a prerequisite to providing mandatory E911 a PSAP must first request E911 service regardless of whether a network-based or a handset-based E911 solution is utilized. These decades old rules were unaltered in the Commission's most recent rulemaking order which addressed E911 requirements. *Fourth Report and Order*, 30 FCC Rcd. 1259 (2015). Moreover, an additional exception was added to 47 C.F.R. § 20.18(j)(1) (2014), redesignated as § 20.18(m)(1) in the *Fourth Report and Order*, 30 FCC Rcd. at 1365, which explicitly excuses carriers which have not received a PSAP request for E911 service from the x- and y- axis coordinate accuracy requirements.⁷ The *Fourth Report and Order* does not explain why § 20.18(m)(1) does not explicitly exempt § 20.18(h)(3) (time to fix accurately 911 caller location), but since Petitioner is excused from § 20.18(j)'s x- and y- axis coordinate accuracy pursuant to § 20.18(m)(1), § 20.18(h)(3)'s time to fix caller location accurately cannot apply.

Other waiver applicants in this proceeding report that the *Fourth Report and Order* (FCC 15-9) as originally released expressly exempted carriers from the § 20.18(i) requirements in the absence of a PSAP E911 service request, but they further report that the exception was removed via a March

⁶ Superficial application of § 20.18(m)(1) would seem to make the latency standard found at § 20.18(h)(3) applicable to Petitioner even though Petitioner does not have compliant E911 assets installed and even though Petitioner is explicitly exempted from the § 20.18(j) confidence and uncertainty requirements – one cannot possibly determine a “time to fix” a caller's coordinates unless compliant location equipment and software are installed. As discussed below, a plain reading of § 20.18 nevertheless discloses the fact that Petitioner is exempted from the location requirements of § 20.18.

⁷ § 20.18(m)(1) (2015) excuses Petitioner from complying with § 20.18(j) (2015) (confidence and uncertainty data requirement).

3, 2015 *Erratum*. See e.g., Bristol Bay Petition, at 3; Docomo Petition, at 3; Bluesky Petition, at 4. Changing the substantive rule in the *Erratum* violates notice requirements and fails to explain the need for the rule change – indications that the limited text of the exemption found at § 20.18(m)(1) as written in the *Erratum* was not worded precisely. Moreover, while the *Fourth Report and Order* (FCC 15-9) states that the indoor location rules apply to “all CMRS providers,” that comment must be read in the context that the purpose of the rulemaking is to “enhance the ability of Public Safety Answering Points (PSAPs) to accurately identify the location of wireless 911 callers when the caller is indoors.” *Fourth Report and Order*, 30 FCC Rcd. 1259, 1260, 1261 ¶¶ 1, 6 (2015). If the PSAP has not requested E911 service, there is nothing to “enhance” and “all CMRS providers” must refer to CMRS providers which are obligated to a PSAP.

The *Fourth Report and Order* does not classify the § 20.18(i) indoor location requirement as a new “Phase III” of E911 service which must be implemented by all carriers. In fact, the *Fourth Report and Order* plainly states that the indoor location requirement is an extension of the Phase II outdoor location requirement from which Petitioner is exempted by the explicit texts of § 20.18(d)(1),(f),(g)(2),(j)(1),(m)(1). See *Fourth Report and Order*, 30 FCC Rcd. at 1265 (“wireless callers receive the same protection whether they place a 911 call indoors or outdoors.”). There is nothing in the *Fourth Report and Order* which alerted Petitioner that it was required to install indoor location equipment and software in the absence of a PSAP’s request for E911 service. Absent a requirement to install those indoor location assets it makes no sense to require Petitioner to comply with paperwork requirements associated with the provision of indoor location service and Petitioner cannot find any Commission justification for the requirement.⁸

⁸ In addition to appearing to be an irrational paperwork requirement as applied to Petitioner, the failure of the *Fourth Report and Order* to discuss any new requirement that Petitioner must comply with the E911 rules in the absence of a PSAP request for E911 service means that the

For nearly 20 years the requirement of a valid PSAP request has been a prerequisite to a carrier's obligation to install and maintain E911 software and hardware. Not only is the rule application and waiver requirement imposed upon Petitioner unduly burdensome and needless, it appears that these requirements, as applied against Petitioner, violates basic rulemaking and due process requirements.

A valid PSAP E911 service request has been a continuing prerequisite to the provision of E911 services since 1996 and Petitioner can find no Commission discussion which explains the contrary view is expressed in the March 30, 2017 *Public Notice*. A basic tenant of administrative law is that a regulated entity is entitled to object to rules at the time of rule application without regard to when the rule was adopted and seeking relief from the impending June 2, 2017 certification requirement is appropriate at this time. Moreover, the Commission is required to explain why it changed its § 20.18 location rules to make them applicable to Petitioner notwithstanding the fact that Petitioner was previously exempted because it had not received a PSAP request for E911 service. However, neither the March 30, 2017 *Public Notice* nor any rulemaking proceeding provides any explanation for the rule change announced in the *Public Notice*.⁹ Therefore, the indication in the March 30, 2017 *Public Notice* that parts of the § 20.18 location rules are applicable to Petitioner is not supported by an appropriate authority and Petitioner is entitled to a declaratory ruling.

Alternative Relief Request

Alternatively, if declaratory ruling is not granted, rule waiver is warranted. The discussion

Commission could not have obtained OMB paperwork approval to collect indoor location accuracy certifications, or other location paperwork, from Petitioner in violation of the Paperwork Reduction Act of 1995. 44 U.S.C. § 3501 *et seq.*

⁹ The Commission's most recent E911 rulemaking is the *Fourth Report and Order*, 30 FCC Rcd. 1259 (2015). Petitioner cannot see that any E911 location capability rule change pertinent to Petitioner is discussed in that document.

above is incorporated herein by reference. In summary, while Petitioner has E911 equipment installed, the PSAP has not requested delivery of E911 call information. Because Petitioner is not required to comply with the substantive provisions of Section 20.18 regarding the installation and maintenance of location capable E911 equipment, the underlying purpose of the Section 20.18 information collection rules would not be served by requiring compliance nor would the purpose of the information collection rules be subverted by grant of waiver. Moreover, the public interest will not be harmed by waiver of the various Section 20.18 reporting and certification rules which are associated with, and which collect information relating to, the required provision of E911 location services.¹⁰ No rule mandated location service is being provided and there is no required location accuracy information to collect. It is respectfully submitted that “good cause” exists and that rule waiver is appropriate.

In the event that the Commission finds that the *Fourth Report and Order* did require Petitioner to install compliant indoor location assets notwithstanding the lack of a PSAP E911 service request, Petition seeks waiver on virtually the same grounds: any collected information would not be transmitted to any PSAP which has requested E911 service and the purpose of the rule would not be undermined by grant of a waiver. Moreover, waiver of the asset installation and associated information collection rules would further the public interest by preserving scarce resources until six months after the time that a PSAP submits a valid E911 service request.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that Petitioner is entitled to a declaratory ruling that in the absence of a valid PSAP request for E911

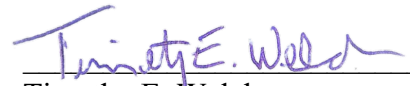
¹⁰ The information collections for which waiver is sought are: FCC Live 911Call Data Reports, indoor location accuracy certifications, implementation plans, and progress reports required by § 20.18(i)(3)(ii)(E), § 20.18(i)(3)(iii), § 20.18(i)(4)(i) and § 20.18(i)(4)(ii).

service, that Petitioner is not required to comply with § 20.18(i)'s testing, plan reporting, live call data reporting, and location accuracy certification/waiver requirements or any implied E911 asset installation requirement. Alternatively, rule waiver would serve the public interest.

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June 2, 2017

Respectfully submitted,
FARMERS MUTUAL COOPERATIVE
TELEPHONE COMPANY



Timothy E. Welch
Attorney for Petitioner

CERTIFICATION

I hereby certify under penalty of perjury that I have reviewed the foregoing *Petition for Declaratory Ruling or Alternatively Petition for Temporary Waiver*, that I have personal knowledge of the facts stated therein, and that the information contained therein is true and accurate to the best of my knowledge, information, and belief.

A handwritten signature in black ink, reading "Thomas Conry CEO". The signature is written in a cursive style with a horizontal line above the first name.

Typed Name: Thomas Conry
Title: CEO
Farmers Mutual Cooperative Telephone Company

May 31, 2017

CERTIFICATE OF SERVICE

I, Timothy E. Welch, hereby certify that on June 2, 2017 I filed the foregoing *Petition for Declaratory Ruling or Alternatively Petition for Temporary Waiver* with the Commission's Secretary via the ECFS and that I emailed a copy of the pleading to the following:

Michael Wilhelm, Acting Division Chief
Policy and Licensing Division
Public Safety and Homeland Security Bureau
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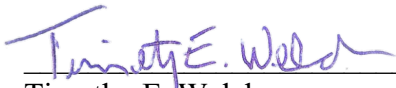
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